

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION**

STEVEN E. HAMMER, individually and on	)	
behalf of all others similarly situated,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 08-CV-339-FJG
	)	
JP'S SOUTHWESTERN FOODS, L.L.C. d/b/a	)	
JOSE PEPPER'S BORDER GRILL &	)	
CANTINA; and DOES 1 through 10, inclusive,	)	
	)	
Defendants.	)	

**DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION *IN LIMINE* NO. 5**

Defendant, JP'S Southwestern Foods, L.L.C. ("JP's"), by and through its attorneys, hereby submits its Response to Plaintiff's Motion *in limine* No. 5.

1. Plaintiff's motion seeks to exclude JP's from introducing any evidence that the Plaintiff is involved in any other litigation.
2. This evidence is relevant to the proper amount of any statutory damages he may recover. Specifically, Plaintiff's FACTA claims against other merchants go to his knowledge of FACTA, and actual harm he may have experienced from other vendors' actions. All of this is relevant to the amount of statutory damages he should be awarded in this case. The evidence is also admissible to show when Plaintiff learned of FACTA and whether he should have discussed the truncation issue with JP's.
3. Moreover, Plaintiff has conceded the relevance of this evidence and has waived any objection thereto as he attached the list of his other FACTA lawsuits as one of his own trial exhibits. (See Plaintiff's Trial Exhibit No. 49).

WHEREFORE, Defendant, JP's Southwestern Foods, L.L.C., respectfully requests this Honorable Court deny Plaintiff's Motion *in limine* No. 5.

Dated: July 27, 2010

JP'S SOUTHWESTERN FOODS, L.L.C. d/b/a  
JOSE PEPPER'S BORDER GRILL & CANTINA

By: /s/Joe Gagnon  
One of Its Attorneys

Joe Gagnon  
Gagnon Law Firm, LLC  
P.O. Box 208  
504 Center Street, Suite E  
Lathrop, MO 64465  
(816) 740-4541

James K. Borcia  
David O. Yuen  
Tressler LLP  
233 South Wacker Drive, 22nd Floor  
Chicago, IL 60606  
(312) 627-4000

**CERTIFICATE OF SERVICE**

I hereby certify that on July 27, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following:

Ryan L. McClelland  
The Flagship Building  
200 Westwoods Drive  
Liberty, MO 64068- 1170

Fred Walters  
Walters. Bender. Strohbehn & Vaughan. P.C.  
2500 City Center Square  
1100 Main Street  
Kansas City, MO 64196

s/ Joe Gagnon

Joe Gagnon  
Gagnon Law Firm. LLC  
P.O. Box 208  
504 Center Street. Suite E  
Lathrop, MO 6446;  
(816) 740-4541

James K. Borcia  
Tressler LLP  
233 South Wacker Drive, 22<sup>nd</sup> Floor  
Chicago. IL 60606  
(312) 627-4000